

83-92-I

ATTORNEY GENERAL
GREGORY H. SMITH

DEPUTY ATTORNEY GENERAL
PETER W. MOSSEAU

ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
~~ANNE R. CLARKE~~
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
~~BETSY S. WESTGATE~~
~~EDWARD L. CROSS, JR.~~
PETER C. SCOTT
~~MICHAEL A. PIGNATELLI~~
BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL
JOHN A. MALMBERG
DOUGLAS L. PATCH
LORETTA S. PLATT
ROBERT P. CHENEY, JR.



THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

ASSISTANT ATTORNEYS GENERAL
LESLIE J. LUDTKE
ANDREW L. ISAAC
RONALD F. RODGERS
G. DANA BISBEE
PETER T. FOLEY
STEVEN M. HOURAN
JEFFREY R. HOWARD
EVE H. OYER
GREGORY W. SWOPE
JAMES D. CAHILL, III
CHARLES W. GRAU
DANIEL J. MULLEN
T. DAVID PLOURDE

ATTORNEYS
EDNA M. CONWAY
AMY L. IGNATIUS
DAVID K. MULHERN
JAMES A. SWEENEY
ROBERT B. MUH

August 30, 1984

Major Mason Butterfield
Chief of Law Enforcement
Fish and Game Department
34 Bridge Street
Concord, New Hampshire 03301

RE: AUTHORITY OF CONSERVATION OFFICERS TO ENFORCE
BOATING RULES

Dear Major Butterfield:

You have requested our advice on the question of whether Fish and Game conservation officers are authorized to enforce boating rules promulgated by the Department of Safety. Upon review of the relevant statutes and New Hampshire case law, it is my position that conservation officers may enforce these regulations.

Your inquiry arises from Fish and Game's desire to assist the Department of Safety in enforcing its safe boating rules. You have mentioned to me the specific example of clam diggers who overload their boats with excessive gear and passengers while crossing dangerous water to get to the clam flats. I also understand that there may be isolated instances in the remote areas of the State where conservation officers may wish to cite individuals for violations of various boating regulations.

That Fish and Game conservation officers have the authority to enforce laws relating to boats is undisputed. RSA 206:26 specifically provides that "each conservation officer shall have the power to enforce the laws relating to ... boats." Therefore, your inquiry essentially asks whether the boating rules adopted by the Department of Safety constitute boating laws, as understood in RSA 206:26.



Major Mason Butterfield
August 30, 1984
Page 2

One need look no farther than the New Hampshire Supreme Court's decision in Ferretti v. Jackson, 88 N.H. 296, 298 (1936), to answer this question. In that case, the Court discussed the delegation of rulemaking authority to state agencies. In its discussion the Court dwelled on the nature of administrative rules and regulations, stating that "rules and regulations validly made by such an agency are in actuality laws.... [T]hey are directions and orders of conduct, at least when other than of course or procedure, and meet all tests and definitions of law.... [T]heir identity as laws ... remains." Id.; see also, Opinion of Justices, 121 N.H. 552 (1981). I would also note that RSA 541-A:12, II provides that rules "shall have the force of law."

Therefore, because conservation officers have the general authority to enforce all boating laws in the State, they may properly enforce the boating rules promulgated by the Department of Safety.

Conservation officers should not, of course, exercise this authority in such a way as to interfere with the enforcement efforts of other law enforcement authorities. Ordinarily, in areas not within the direct scope of Fish and Game laws, the Department should defer to the jurisdiction of law enforcement agencies more directly implicated by the violations of particular rules. It may be appropriate in the case of enforcements of safe boating rules to coordinate your efforts with those of the Department of Safety.

Please let me know if you have any further questions or comments on this matter.

Yours truly,

George Dana Bisbee
Assistant Attorney General
Environmental Protection Division

GDB:sed

cc: Robert X. Damos

#83-92-I